Held: there is nothing wrong if the vehicle is weighed by the same officer who stops it and takes it to the weighbridge provided that he is the officer in charge of the weighbridge. The weighing of the vehicle was properly carried out in this case and the appeal must therefore be allowed.

Case referred to:-

(1) *Maasah bin Deraman* v. *Public Prosecutor* [1973] 2 M.L.J. 180.

CRIMINAL APPEAL.

Abdul Murad bin S. Ismail (Deputy Public Prosecutor) for the appellant.

F. H. D'Cruz for the respondent.

Pawan Ahmad J. (delivering oral judgment): The Public Prosecutor appealed from the order of acquittal of the Magistrate's Court and the substantial grounds of appeal in brief are as follows: —

i. That the learned president erred in law and in fact in stating that P.W.1 is not a person in charge of the weighbridge and therefore not authorised to weigh the vehicle in question;

ii. That the learned president erred in interpreting the judgment in Malacca Criminal Appeal No. 26 of 1972. (*Maasah bin Deraman* v. *Public Prosecutor*[1]).

As to ground (i) above there is the clear unchallenged evidence of PW1, Jaffar bin Kulub, Enforcement Officer of the R.I.M.V., Malacca, who stated that he was at the material time officer in charge of the weighbridge. From the records it would appear that not even one question was directed at this witness in cross-examination to challenge this testimony. I must therefore rule that the learned President should have found as a fact that PW1 was the officer in charge of the weighbridge.

As to the second ground, I might state here that in *Masaah bin Deraman* v. *Public Prosecutor*[1] the vehicle was stopped by a police sergeant who was only authorised to stop and take the vehicle to the weighbridge under section 53(1) of the Road Traffic Ordinance. There was no evidence in that case that the police sergeant was also the officer in charge of the weighbridge. It is because of this I ruled that his duties did not extend to the weighing of the vehicle. The facts in this case are different, for not only was PW1 empowered under section 53 to stop vehicles and take them to the weighbridge, he is also the duly appointed officer in charge of the weighbridge. In my judgment in *Maasah bin Deraman* v. *Public Prosecutor* I did not mean to rule that the officer who stops the vehicle and takes it to the weighbridge is precluded from weighing the vehicle. There is nothing wrong if the vehicle is weighed by the same officer who stops and takes it to the weighbridge provided that he is the officer in charge of the weighbridge. I must therefore rule that in the present case the weighing of the vehicle was properly carried out.

Counsel for the respondents argued before me that the certificate in respect of the weighbridge was served only on the owner of the vehicle and not on the driver. I must point out that section 143(b) of the Road Traffic Ordinance is of no relevance in this case and therefore has no application in proceedings relating to the weight of any vehicle. Section 143(7) stipulates that in proceedings relating to the weight of any vehicle the certificate "shall be accepted by any court as *prima facie* proof of the facts certified in such certificate." As I see it, there is no requirement under the Road Traffic Ordinance that such certificate should be served either on the owner or the driver of the vehicle. I am therefore unable to accept the submission of the counsel for the respondents on the question of service of the certificate.

As to exhibit P3, it is clear that it is both a certificate and receipt in one piece. This exhibit though not dated has a date "13th August, 1971" printed on it. This in my finding is the date on which payment in respect of the examination of the weighbridge was made. In addition to this there is the evidence of PW1 who stated that the weighbridge was checked on 13 August 1971. I must therefore find that the weighbridge was duly checked and examined on 13 August 1971, well within the period of eight months stipulated under section 143(7)(a) of the Road Traffic Ordinance.

It may be relevant to state here that in regard to the weighing of vehicles, all that the person in-charge of the vehicle is entitled to is a duplicate or copy of the weight certificate in respect of the weighing of a vehicle if so required by him as provided under section 53(2) of the Road Traffic Ordinance.

The appeal of the Public Prosecutor must therefore be allowed and the order of acquittal of both the respondents set aside. Magistrate's Court Summons cases Nos. 1656 and 1657 of 1972 will both be remitted for retrial before another magistrate.

Appeal allowed.

Solicitors: *Tay Leong Siak & Co.*

PUBLIC PROSECUTOR v. MOHAMAD RAMLY

[A.Cr.J. (Mohamed Azmi J.) December 4, 1973]
[Kuala Lumpur — Criminal Appeal No. 147 of 1973]

Criminal Law and Procedure — Sentence — Charge of forgery and using a forged document — Plea of guilty — Accused bound over — Sentence manifestly inadequate — Criminal Procedure Code (F.M.S. Cap. 6), s. 173A.

The appellant had pleaded guilty to two charges of forging a M.C.E. certificate and of using the said forged document. He had no previous record and after considering a probation report, the learned magistrate bound him over under section 173A of the Criminal Procedure Code. The Public Prosecutor appealed on the ground that the sentences were inadequate.

Held: the offences in this case should not be considered lightly and public interest would not be served by discharging the offender conditionally on his entering into a bound of good behaviour. The sentences were manifestly inadequate and should be enhanced to a fine of $500 in default six months imprisonment on the first charge and a fine of $250 in default three months imprisonment on the second charge.

CRIMINAL APPEAL.

Lamin bin Haji Mohamad Yunos (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Mohamed Azmi J. (delivering oral judgment): The accused who was a trainee in the Police College at Kuala Kubu Bahru pleaded not guilty to two charges of forgery. But after three of the prosecution witnesses had given evidence on July 16, 1973, he pleaded guilty to the amended first charge which reads:

"That you on 1st September, 1972 at the Police College, Kuala Kubu Bahru, in the district of Ulu Selangor, in the State of Selangor, fraudulently used as genuine a certain document, to wit, the photostat copy of the Malaysia Certificate of Education which you knew at the time you used it to be a forged document, and that you have thereby committed an offence punishable under section 465 and 471 of the Penal Code."

The learned magistrate then adjourned the case to August 20, 1973 for sentence on the first charge and for mention on the second charge. When the case came up on August 20, the learned magistrate proceeded to assess sentence on the first charge. From the finger-print report, the learned magistrate found the accused had no previous criminal record and he also considered the probation report which appeared to be favourable. After considering the plea in mitigation, he bound over the accused in the sum of $1,000 with one surety for a period of two years under section 173A of the Criminal Procedure Code. After the sentence was passed, the accused decided to change his plea to one of guilty on the second charge which reads:

"That you between 15.12.71 and 1.9.72 at the Police College, Kuala Kubu Bahru, in the District of Ulu Selangor, in the State of Selangor, forged a certain document, to wit, a MCE certificate wherein the name and index number have been erased and substituted another name and index number with intent to commit fraud and that you have thereby committed an offence punishable under 465 of the Penal Code."

The plea of guilty was accepted and the accused was also bound over under section 173A of the Criminal Procedure Code on the same terms as in the first charge.

The Public Prosecutor now appeals against the said orders contending that the sentence passed on both the charges is inadequate.

In his grounds of judgment, the learned magistrate had this to say on sentence:

"After considering the accused's plea in mitigation, the probation report, his age, public policy and all the circumstances of the case I bound over the accused in the sum of $1.000 with one surety for a period of 2 years under section 173A of the Criminal Procedure Code on each of the charges."

Towards the end of his judgment, he also said:

"In passing the sentence I did, I was greatly influenced by the accused's change of plea in the course of the trial. He repented for what he had done. He was a first offender. The accused did not appear to me as one criminally inclined and therefore I was of the view he should be given an opportunity to lead an honest and crime free life. I was also of the view the accused would certainly be dismissed from the Police Force for the offences which he had committed. I think the accused's imminent loss of job is in itself a sufficient punishment and lesson to him. After considering all the circumstances carefully, I was of the view a term of imprisonment was not a suitable sentence."

In this appeal, the learned Public Prosecutor concedes that the lower court was right in considering that a term of imprisonment was not a suitable sentence. With that I entirely agree having regard to the circumstances of the case, particularly the fact that the accused was a first offender. The main question to be determined in this appeal is whether the present case falls squarely and fairly within the terms of section 173A(ii)(b) of the Criminal Procedure Code. In my view, the learned magistrate failed to consider sufficiently the serious nature of the offence committed and the deliberate manner in which the crime had been perpetrated. Where the offence committed is not of a trivial nature and it is committed with such degree of deliberateness, a case can rarely come within the ambit of this section. In assessing sentence, a proper balance should be struck between public interest and the interest of the accused. In the present case, it is apparent from the grounds of judgment that the learned magistrate was too preoccupied with the interest of the accused whilst giving no adequate consideration to public interest. The object of punishment is not only to punish the offender but also to deter others. Forging a Malaysia Certificate of Education and using such forged document as genuine should not be considered lightly and the public interest would not be served by discharging the offender conditionally on his entering into a bond of good behaviour with or without sureties.

Having regard to all the circumstances of this case, I am of the view that the sentence passed is manifestly inadequate. The appeal against sentence is accordingly allowed. The order under section 173A of the Criminal Procedure Code is set aside on both counts. I order that a conviction be recorded on both the charges and the sentence should be enhanced to a fine of $500 in default six months' imprisonment on the first charge, and a fine of $250 in default three months' imprisonment on the second charge. If the fines are not paid, the terms of imprisonment should run concurrently.

Appeal allowed.

L.Y.S. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Gill F.J.) December 6, 1973]

[Kuala Lumpur — Originating Motion No. 76 of 1972]

Income Tax — Sums withdrawn from provident fund — Approval of provident fund revoked by Director-General of Inland Revenue — Payment to taxpayer after revocation of approval — Whether sum received is a "lump sum by way of gratuity, deferred pay or otherwise" — Ejusdem generis rule — Income Tax Act, 1967, s. 25(4) and Schedule 9, para. 39.

In this case the appellant had received the sum of $44,906.32 being the total contribution paid into the Kuala Lumpur Municipal Provident Fund by his employers, the Kuala Lumpur Municipality, during the period of his employment with them. The Kuala Lumpur Municipal Provident Fund was an approved fund under the Income Tax Ordinance 1947 and continued to be so under the Income Tax Act, 1967 until the approval was revoked by the Director-General of Inland Revenue on June 24, 1968 with effect from January 1, 1968. The provident fund moneys were paid to the appellant on February 13, 1970. The appellant was assessed to income tax on his income including the sum of $44,906.32 and he appealed. On the appeal, the Special Commissioners decided that the appellant was liable to income tax on the sum of $44,906.32 but they decided that the appellant was entitled to the benefit of proviso (a) to section 25(4) of the Income Tax Act, 1967 and that the sum should be treated as accruing and receivable evenly over the period of the appellant's employment. The appellant appealed against this decision and there was a cross-appeal by the Director-General of Inland Revenue.

Held: (1) as the amount of $44,906.32 was received by the appellant after the revocation of the approval of the provident fund, it was income received from an unapproved fund and therefore liable to tax;

(2) the Special Commissioners were right in holding that the word "otherwise" in proviso (a) to section 25(4) of the Income Tax Act, 1967, was wide enough to include the sum of $44,906.32 and therefore it should be treated as accruing and receivable evenly during the period of the appellant's employment.